IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 44 OF 2004

Ms. Alice David Cadd)
Age 33 years, Occ. Household,)
R/at C/o. Col. G.T. Stephen,)
Flat No.4, Sri Niketan,)
Opp. Agakhan Palace,)
Nagar Road,)
PUNE 411 014) ...Appellant

Versus

Mr. David Trevelyn Cadd,)
Age 36 years, Occ. Service,)
Office at Biji's Resorts)
353-A, Vasu Smriti,)
Off Linking Road,)
Khatwari Darbar Road,)
13th Court, Khar (West),)
MUMBAI 400 052.) ...Respondent.

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Shri. Abhijit Sarwate, counsel for the Appellant

None for Respondent

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CORAM: DR. S. RADHAKRISHNAN AND
SMT. V.K. TAHILRAMANI, JJ.

DATED: 24TH NOVEMBER, 2005

ORAL JUDGMENT (PER SMT. TAHILRAMANI, J.).-

1. Heard the learned counsel for the Appellant.

None appears for the Respondent though served.

2. By way of this appeal, the Appellant has challenged the judgment and order dated 31.1.2004 passed by the Principal Judge, Family Court No.5, Pune in Petition B.No.23/2002 preferred by the Appellant before the Family Court.

3. Brief facts of the case are as under:-

. The Appellant is a Christian. She met the Respondent Mr. David T. Cadd who is also a Christian. Both the Appellant and Respondent are Christians by birth. Thereafter, the Appellant and the Respondent decided to get married. On 28.12.1990 both of them got married as per Hindu religious rites at Pune. The said marriage was performed by a Hindu priest by taking seven rounds around the sacred fire and exchanging garlands. The said marriage was registered under the Hindu Marriage Act.

. However, thereafter, disputes arose between the parties and both the Appellant and the Respondent were separated. In fact, as of today they have been separated for about ten years. The parties decided to apply for divorce by mutual consent, however, they came to know that as both of them were not Hindus,

the provisions of Hindu Marriage Act would not apply to them and hence, they could not seek divorce under the Hindu Marriage Act. Hence, the Appellant then filed a Petition before the Family Court seeking declaration that the marriage is not a valid marriage and the said marriage is null and void. As stated earlier, the said petition came to be dismissed by the Family Court. Being aggrieved thereby, this Appeal has been preferred.

4. From the evidence on record, it is seen that both the husband and wife were Christians. At no point of time, prior to the marriage or at the time of marriage, they were converted to Hinduism. Thus, even on the date of marriage both of them were Christians. However, both the parties have taken part in Hindu rites and rituals and thus claimed that they are married. It is also pertinent to note the marriage was not registered under the Special Marriage Act but it was registered under the Hindu Marriage Act.

5. Section 5 of the Hindu Marriage Act states that the marriage may be solemnised between any <u>two Hindus</u>, if certain conditions are fulfilled. Thus,

it is seen that the basic requirement for a valid Hindu Marriage is that both the parties should be Hindus. Only when both the parties are Hindus and certain conditions are fulfilled, then it can be said to be a valid marriage. In the present case, both the parties are Christians. Thus, the basic ingredient that both the parties should be Hindus, is missing, in such case, the marriage cannot be said to be a valid marriage. In fact it is a void marriage. A void marriage is not a valid marriage and the said marriage does not exist from its beginning. In other words, no legal consequences flow from a void marriage. The said marriage does not confer the status of husband and wife on the parties. It does not give any rights and obligations against each other. A Hindu religious ceremony in which both parties participated cannot make it a valid marriage as both the parties were Christians. Thus, such marriage would be a void marriage. In such case, it is not a decree of the Court which renders such a marriage void as the Court merely declares the marriage to be null and void. The marriage is void from its beginning, the Court merely makes a judicial declaration of that marriage.

6. In view of the facts of this case, we are of the opinion that the alleged marriage between the parties which took place on 28.12.1990 is null and void. Hence, it is declared that the marriage between the parties is a nullity and the said marriage is declared as null and void.

7. In view of the aforesaid reasonings, the judgment and order dated 31.1.2004 passed by the Family Court No.5, Pune in Petition B. No.23/2002 is set aside. Appeal is allowed with no order as to costs.

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